In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 1088

CHARLES H. HENRIKSON AND OLIVER HENRIKSON,
PETITIONERS

v.

STEWART L. UDALL ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

We invite the attention of the Court to the following facts which show that the petition was filed out of time:

The judgment of the court of appeals was entered on September 15, 1965 (Pet. App. ix). A timely petition for rehearing was denied on October 28, 1965 (Pet. App. viii). The application for an extension of time in which to file a petition for a writ of certiorari was filed on January 27, 1966 (Pet. 3), ninety-one days later. In response to this application, Mr. Justice Douglas extended the time within which to file a petition for a writ of certiorari to and including February 26, 1966, "without prejudice to the Court's

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consideration of whether this application has been filed in time" (Pet. 3). On February 28, 1966, Mr. Justice Douglas granted a further extension of time within which to file a petition for a writ of certiorari to and including March 1, 1966, and the petition was filed on March 1.

Section 2101(c) of Title 28 of the United States Code provides that "any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree." Since these limits are jurisdictional, and since neither the petition for a writ of certiorari nor the application for an extension of time within which to file a petition were filed within ninety days in this case, the petition should be dismissed as untimely.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

APRIL 1966.

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